Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	
Telecommunications Act of 1996:	)	CC Docket No. 96-115
	)	
Telecommunications Carriers' Use	)	
of Customer Proprietary Network	)	
Information and Other Customer	)	
Information	)	

COMMENTS OF BELLSOUTH CORPORATION ON FURTHER NOTICE OF PROPOSED RULEMAKING

BellSouth Corporation, for itself and its affiliated companies ("BellSouth"), hereby responds to the Commission's *Further Notice of Proposed Rulemaking* in the above referenced proceeding.[1]

The Commission asks first whether it should adopt additional regulations under Section 222(c)(1)[2] of the Act[3] to give customers even further opportunity to restrict carriers' lawful use of the "customer proprietary network information" (CPNI) that carriers generate in providing telecommunications services to their customers.[4] It should not.

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1 *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, and Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as Amended*, CC Docket No. 96-115, CC Docket No. 96-149, FCC 98-27, *Second Report and Order and Further Notice of Proposed Rulemaking* (rel. Feb. 26, 1998) ("*Order*" or "*Further Notice*" as context dictates).

2 47 U.S.C. § 222(c)(1).

3 The Telecommunications Act of 1934, as amended, 47 U.S.C. §§ 151 *et seq.*

4 *Further Notice* at ¶¶ 204-05.

The Commission also asks[5] whether new regulations are necessary to implement or enforce Sections 222(a)[6] and 222(b)[7] of the Act. They are not.

BellSouth's comments are set forth below.[8]

Additional Regulations Under Section 222(c)(1)

The Commission has interpreted Section 222(c)(1) of the Act to require telecommunications carriers to obtain affirmative approval from a customer before using CPNI derived from the carrier's total service relationship with the customer to market services outside of that relationship to that customer.[9] Affirmative approval is not required for a carrier to use CPNI to market additional services within that relationship; approval is inferred from the relationship itself.[10] The Commission inquires in the *Further Notice* whether it should adopt additional regulations to create a right for customers to deny carriers all marketing uses of CPNI. Such additional regulations are neither necessary nor appropriate and should not be adopted.

Additional regulations are unnecessary because customers already have available to them all the rights and tools they need to prevent carriers from engaging in unwanted marketing activity within the existing total service relationship. Specifically, the Commission determined in the *TCPA Order*[11] that "any person or entity engaged in telephone solicitation is required to

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5 *Further Notice* at ¶¶ 206-07.

6 47 U.S.C. § 222(a).

7 47 U.S.C. § 222(b).

8 BellSouth does not address herein issues regarding foreign storage or access to domestic CPNI. *Further Notice* at ¶¶ 208-10.

9 *Order* at ¶ 25; 47 C.F.R. §64.2007(a).

10 *Order* at ¶ 24; 47 C.F.R. §64.2005(a).

11 *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 7 FCC Rcd 8752 (1992).

maintain a list of residential telephone subscribers who request not to be called by the telemarketer."[12] BellSouth maintains such a "do not call" list in accordance with the Commission's requirements and uses it to delete from calling lists BellSouth provides to its telemarketers the names of customers who have indicated a desire not to be called. BellSouth similarly maintains a "do not mail" list and excludes these customers from its mailing lists for special marketing promotions. Accordingly, consumers who consider telephone marketing solicitations to be invasive of their privacy or who view direct mail marketing materials to be unwanted "junk mail" already have available to them the means to restrict such activity.

Nor would it be appropriate to try to tailor these existing obligatory and voluntary consumer protection devices to apply manditorily in peculiar ways or circumstances to carriers and CPNI. To do so would likely be more confusing for customers than beneficial.

For example, some customers are already likely to experience confusion that a restriction on a carrier's use of CPNI in accordance with the requirements of the *Order* does not mean the customer will not get any more undesired telemarketing or mail solicitations. Rather, the CPNI restriction will simply prevent the carrier from using CPNI to develop the list for its telemarketing or direct mail marketing.[13] These customers would be likely to be even more confused if the Commission were to adopt additional regulations that create yet another level of CPNI restrictions, but that do not give customers any increased protection against unwanted solicitations. Customers who want to avoid solicitations would *still* have to request to be placed

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12 *Id.* at 8766; *see also*, 47 C.F.R. § 64.1200(e)(2)(vi).

13 In this respect, widespread restrictions of customers' CPNI has the potential to lead to *greater* telemarketing and sales solicitations because a carrier may simply blanket a geographic area with telemarketing or direct mail solicitations rather than use CPNI to develop a more refined list of attractive candidates for the service being marketed.

on a carrier's do not call list. The Commission can avoid this unnecessary confusion by minimizing the levels of CPNI restrictions from which customers might choose.

Finally, although some might argue that there is a difference between the privacy expectations protected through a do not call or do not mail list and the expectations protected through a CPNI restriction, the protection offered by a do not call or do not mail list is broad enough to encompass the customer privacy interests advanced by Section 222(c). That is, customers on a carrier's do not call or do not mail list are not going to receive telemarketing calls or mail solicitations from the carrier regardless of whether the carrier's telemarketing or mailing list is derived from CPNI. The CPNI of customers on do not call or do not mail lists is thus useless to the carrier's marketing activity because the carrier cannot call or send mail solicitations to customers on the do not call or do not mail list in any event. Under this circumstance, where the CPNI of these customers is of no use to the carrier's marketing activity, the Commission need not adopt additional regulations to limit such uses of CPNI that have already been denied by virtue of the do not call list.

New Regulations Under Sections 222(a) and 222(b)

The Commission also need not and should not adopt new regulations under Sections 222(a) or 222(b). The provisions of those sections are self-explanatory and need no implementing regulations. Additionally, the Commission should avoid extending the scope of those sections beyond their terms through gratuitous interpretation. Accordingly, no new regulations should be adopted.

As a threshold issue, the Commission inquires in the *Further Notice* whether regulations are necessary to protect "*carrier* information, including that of resellers and *information service*

providers" and, similarly, "information of other *carriers*, including resellers and *information service providers.*"[14] The Commission has previously interpreted the term "carrier" in other provisions of the Act not to include information service providers that do not also provide telecommunications services.[15] Rather, ISPs are customers of carriers' telecommunications services. Although resale carriers and ISPs both may be customers of a carrier's services, ISPs are no more entitled to the benefits and rights of carriers under the Act than is any other non-carrier customer.

This distinction between carriers and other customers is retained in the structure of Section 222. Specifically, Congress has perpetuated this differentiation by referring to both "carriers" and "customers" in Section 222(a), but only to "carriers" under Section 222(b). Until Congress or the Commission determines that ISPs should be subjected to all of the obligations of carriers, the Commission should not gratuitously imbue them with rights Congress has granted only to carriers under the Act.

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14 *Further Notice* at ¶ 206 (emphasis added).

15 *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 15990 (1996) ("[E]nhanced [information] service providers that do not also provide domestic or international telecommunications. . . are thus not telecommunications carriers within the meaning of the Act.") ("*Local Interconnection Order*"), *aff'd in part and vacated in part sub nom. Competitive Telecommunications Ass'n v. FCC*, 117 F.3d 1068 (8th Cir. 1997); *vacated in part on reh'g, Iowa Utilities Bd. v. FCC*, 120 F.3d 753, *further vacated in part sub nom. California Public Utilities Comm'n v. FCC*, 124 F.3d 934, *writ of mandamus issued sub nom. Iowa Utilities Bd. v. FCC*, No. 96-3321 (8th Cir. Jan. 22, 1998), *petition for cert. granted*, Nos. 97-826, 97-829, 97-830, 97-831, 97-1075, 97-1087, 97-1099, and 97-1141 (U.S. Jan. 26, 1998) (collectively, *Iowa Utils. Bd.*), *Order on Reconsideration*, 11 FCC Rcd 13042 (1996), *Second Order on Reconsideration*, 11 FCC Rcd 19738 (1996), *Third Order on Reconsideration and Further Notice of Proposed Rulemaking*, FCC 97-295 (rel. Aug. 18, 1997), *further recons. pending.*

Notwithstanding this distinction, there is no need for the Commission to adopt regulations to further the restrictions imposed by Sections 222(a) and 222(b). As TRA -- one of the principle advocates of adoption of regulations under these sections -- concedes, "the duties and obligations set forth in new Sections 222(a) and 222(b) . . . are *remarkably clear and direct*."[16] Additional regulation would merely be redundant.

In fact, the Commission has already adopted the only clarification that arguably may have been necessary under these sections. Specifically, the Commission has confirmed that Section 222 applies evenly to *all* carriers.[17]

Consistent with that determination, the Commission must ensure that if it does nevertheless adopt regulations, that they do not operate as "one-way" obligations. In particular, the Commission must ensure that if carriers selling wholesale services to resale carriers have specific implementation obligations beyond the duties set forth in the Act, that the resale carriers adhere to similar protective measures. This is particularly crucial with respect to the degree of flexibility that ILECs have afforded CLECs in providing access to OSS systems, consistent with other goals and obligations under the Act. The Commission must ensure that it does not adopt rules that have the effect of imposing greater burdens on ILECs' access to information than are imposed on CLECs seeking access to the same information. Thus, if the Commission imposes personnel or mechanical access restrictions or certification procedures on carriers who possess information, the Commission must impose comparable obligations on other carriers that are granted access to that information.

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16 Telecommunications Resellers Association ("TRA") Comments, CC Docket 96-115, at 9 (filed June 11, 1996).

17 Order at ¶ 49.

Similarly, no new enforcement mechanisms are necessary to achieve compliance with the obligations under these sections. If the Commission nevertheless pursues special procedures or remedies under these sections, it must ensure that all carriers are subject to them equally. For example, if the Commission considers any streamlining of processes for complaints by resellers, the Commission must also ensure that ILECs have swift and sure recourse against CLECs that abuse their privileges of access to OSS. To do otherwise would violate the prior determination that Section 222 applies evenly to all carriers.

CONCLUSION

No additional regulations are necessary under Section 222. Customer privacy interests with respect to carriers' use of CPNI for marketing additional services within the scope of an existing service relationship are already adequately protected by the Commission's "do not call" requirements. Sections 222(a) and 222(b) are "remarkably clear and direct" and need no explication. For these reasons as presented herein, the Commission should not adopt further regulations in this proceeding.

Respectfully submitted,

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Date: March 30, 1998

CERTIFICATE OF SERVICE

I do hereby certify that I have this 30th day of March, 1998, served all parties to this action with a copy of the foregoing **COMMENTS** by placing a true and correct copy of same in the United States Mail, postage prepaid, addressed to the parties listed below:

Janice Myles*
Common Carrier Bureau
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Denise W. Tuttle

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* By Hand Delivery